

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**CARMEN BRITT and CARMEN BRITT,
As Executor of the Estate of Lula Baity,**

Plaintiff,

06-CV-0057S(Sr)

v.

**BUFFALO MUNICIPAL HOUSING
AUTHORITY, et al.,**

Defendants.

DECISION AND ORDER

This case was referred to the undersigned by the Hon. William M. Skretny, in accordance with 28 U.S.C. § 636(b)(1)(A), for all pretrial matters, and for hearing and disposition of all non-dispositive motions or applications. Dkt. #6.

Currently before the Court is plaintiff's motion for reconsideration of that part of this Court's Decision and Order (Dkt. #182), which denied plaintiff's motion to amend the complaint (Dkt. #94), to add Jill Stadelmeyer, Certified Social Worker for Crisis Services, as a defendant in this action and to substitute Rural/Metro employees Michael Dudkowski and Christy Lindner for defendants Robert Roe #1 and Robert Roe #2 and to add a cause of action for gross negligence and malpractice (other than medical malpractice), against them. Dkt. #207.

In support of the motion for reconsideration, plaintiffs repeat their allegation that Jill Stadelmeyer, Michael Dudkowski and Christy Lindner "failed to minimally ascertain, via taking a brief investigative history or otherwise, to validate or authenticate Ms. Giwa's representations and/or credentials that she, herself, was, in fact, Ms. Baity's 'social worker.'"

Dkt. #207, ¶ 9.

Section 9.58 of the Mental Hygiene Law permits a qualified mental health professional, including a licensed clinical social worker, who is a member of an approved mobile crisis outreach team, such as Crisis Services' Emergency Outreach Program, which is the mobile unit of the Erie County Medical Center's Comprehensive Psychiatric Emergency Program ("CPEP"), to transport an individual for the purpose of evaluation for admission if such person appears to be mentally ill and is conducting himself or herself in a manner which is likely to result in serious harm to the person or others. Upon the request of such a qualified mental health professional, an ambulance service is authorized to transport such a person. N.Y. Mental Hygiene Law § 9.58(b).

As a result, the Court finds no basis to reverse its determination that there is no factual basis to assert a cause of action for gross negligence or malpractice (other than medical malpractice), against Jill Stadelmeyer, the licensed clinical social worker for Crisis Services' Emergency Outreach Program, or to substitute Rural/Metro employees Michael Dudkowski and Christy Lindner for defendants Robert Roe #1 and Robert Roe #2 and to add a cause of action for gross negligence and malpractice (other than medical malpractice), to the causes of action asserted against the unnamed defendants in the original complaint. Plaintiff's motion for reconsideration (Dkt. #207), is denied.

SO ORDERED.

DATED: Buffalo, New York
March 11, 2009

s/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge